

## Article - Environment

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§15-505.

(a) Before any person conducts open-pit mining, he shall obtain a permit from the Department for each separate operation. All permits shall require the operator to comply with all amendments to this subtitle and rules and regulations adopted pursuant thereto. A permit may not be issued if the Department determines that reclamation cannot be accomplished in accordance with the requirements of this subtitle or rules and regulations adopted pursuant thereto. The permit is valid for a term not to exceed 5 years, unless the Department suspends or cancels it prior to that time. If an applicant demonstrates that a specified longer term is necessary to obtain financing for equipment and opening the operation, the Department may grant a permit for such longer term. A permit issued under this subtitle shall carry with it the right of successive renewal and may be renewed if the permit meets the requirements of this subtitle and rules and regulations adopted under this subtitle. A permit may not be transferred or assigned without written approval from the Department.

(b) (1) Subject to paragraph (2) of this subsection, the Department may not issue, extend or renew any permit to mine coal by the open-pit or strip method on any land the State owns whether or not the ownership includes mineral rights incident to the land, except when the Secretary, with the recommendation of the Land Reclamation Committee and the approval of the Board of Public Works, determines that an abandoned mine on State land will be reclaimed in conjunction with the proposed mining or except when the Secretary, with the recommendation of the Land Reclamation Committee and the approval of the Board of Public Works, determines that the mining could occur in conjunction with public construction activities that will disturb the vegetation and topsoil of State land. If the Department's failure to issue, extend or renew a permit involves taking a property right without just compensation in violation of the Constitution of the United States or the Maryland Constitution and the General Assembly has not appropriated sufficient funds to pay the compensation, the State may use available funds under Program Open Space to purchase or otherwise pay for the property rights.

(2) Subject to valid existing rights, as that term is used in the federal Surface Mining Control and Reclamation Act of 1977, the Department may not issue, extend or renew any permit:

(i) Which would adversely affect any publicly owned park or place recorded in the National Register of Historic Sites, unless approved by the federal, State or local agency with jurisdiction over the park or historic site;

(ii) Within the Youghiogheny River scenic corridor, notwithstanding any other provision of law;

(iii) Within 100 feet of the outside right-of-way line of any public road (except where mine access roads or haulage roads join the right-of-way line), unless the Department, after public notice and opportunity for a public hearing in the locality, determines that the interests of the public and the affected landowners will be protected;

(iv) Within 300 feet from any occupied dwelling, unless waived by the owner thereof;

(v) Within 300 feet of any public building, school, public park, church, community or institutional building; or

(vi) Within 100 feet of a cemetery.

(c) The application for a permit or permit revision shall be submitted in a manner satisfactory to the Department and shall contain at a minimum:

(1) A copy of the applicant's advertisement to be published, following approval by the Department, in a newspaper of general circulation in the county of the proposed mining site which includes the ownership of the land to be affected, a description of the location and boundaries of the proposed site sufficient so that the proposed operation is easily locatable by local residents, the location of where the application is available for public inspection, and notice that written comments and requests for a public hearing will be received by the Department for at least 30 days after the last newspaper publication;

(2) A U.S. Geological Survey quadrangle sheet, 7 1/2 minute series enlarged to a scale satisfactory to the Department showing the location of the land affected by the contemplated operation. The map shall be prepared and certified by a registered engineer or registered surveyor approved by the Department. It shall show the boundaries of the area of land which will be affected, the drainage area above and below the area, the location and names of all streams, roads, railroads, buildings, and utility lines on or immediately adjacent to the area, the name of the owner of the area, the boundaries and names of the owners of all surface areas abutting the permit area, and the nearest municipality;

(3) The results of test borings which the operator has conducted at the site of the proposed operation. The application shall include data such as the nature and depth of the overburden, the thickness of the coal seam, a complete

analysis of the coal seam and soil samples, the crop line and strike and dip of the coal seam, and the location of the test boring holes;

(4) A determination of the probable hydrologic consequences of the mining and reclamation operations upon surface and ground waters both on and off the permit area. Information pertaining to the coal seam, test borings, core samples and soil samples shall be available to the public except that information as to the chemical and physical properties of the coal seam other than its potential toxicity shall be confidential;

(5) A certificate stating that the applicant has a liability insurance policy for the operation for which the permit is sought in such amount as the Department determines to be necessary to compensate any person injured or damaged by the operation;

(6) A permit fee of \$10; and

(7) A detailed mining and reclamation plan showing at a minimum, the method for construction of all haul roads, the method for removing and stockpiling topsoil material, the method of mining, a plan for blasting, a plan for control of drainage from the site, a plan for and method of backfilling and regrading, and a plan for revegetation of the area affected.

(d) Procedures for review of an application shall be as follows:

(1) Notwithstanding any provision of the State Government Article, public notice on pending applications provided in accordance with the provisions of this subtitle shall be the only notice required by law.

(2) (i) Except as provided in subparagraph (iii) of this paragraph, upon receipt of a complete application for a permit or permit revision the Department shall require the applicant to publish an approved advertisement of the application submitted under subsection (c) of this section.

(ii) The public notice required in subparagraph (i) of this paragraph shall be published at least once a week for 4 successive weeks in a newspaper of general circulation in the county of the proposed mining operation.

(iii) The public notice required in subparagraph (i) of this paragraph may not be required for an application for permit revision that does not propose significant alterations in a permit in accordance with the Department's regulations.

(3) The Department shall provide written notice of applications for permits or permit revisions to any interested person who requests written notice.

(4) If a public informational hearing is requested, the Department shall notify the applicant and any person who requests the hearing of the date, time, and location of the hearing and shall publish the date, time, and location of the hearing in a newspaper of general circulation in the area of the proposed operation. The Department shall hold a public informational hearing on the application. A record of the hearing shall be made and shall be available to the public.

(5) Any public informational hearing shall be at least 15 but not more than 60 days after the Department provides public notice of the hearing. Members of the public shall be provided an opportunity to comment on the application in writing until the date of any hearing and copies of the application shall be available for public inspection at the Department 15 days before any hearing.

(6) The Department shall review all aspects of the application, including information pertaining to any other permit required from the Department for the proposed strip mining operation in a timely manner.

(7) (i) Upon completion of the review required by paragraph (6) of this subsection, the Department shall grant, require modification of, or deny the application for a permit and notify the applicant and any participant to a public informational hearing, in writing, of its decision:

1. Within 90 days after the date the Department determines that an application for a new permit or an application for permit revision that proposes significant alterations in the permit is complete; or

2. Within 45 days after receiving:

A. A revised application for a new permit; or

B. An application for a permit revision that does not propose significant alterations in the permit.

(ii) The applicant for a permit shall have the burden of establishing that the application is in compliance with all of the requirements of this subtitle and the rules and regulations issued under this subtitle.

(iii) The Department may provide for one extension of the deadlines in subparagraph (i) of this paragraph for up to 30 days by notifying the applicant in writing prior to the expiration of the original deadlines.

(8) The Department shall immediately notify the operator, local governments, and any participants to a public informational hearing of the decision by the Department. Within 30 days of notification, any person adversely affected by the decision may request an adjudicatory hearing. The Department shall hold a hearing in accordance with Title 10, Subtitle 2 of the State Government Article within 30 days of the request and render a decision within 30 days thereafter.

(9) Any applicant, or any person with an interest which is or may be adversely affected, who has participated in the administrative proceedings as an objector, and who is aggrieved by the decision of the Department, or if the Department fails to act within the time limits specified in this subtitle, shall have the right to judicial review in accordance with § 10–222 of the State Government Article.

(e) In addition to any fee required in this subtitle, each applicant for a permit to mine coal by open-pit or strip method shall pay to the Department, before the permit is issued, a special reclamation fee of \$75 for each acre of land affected. The fee shall be paid only when an acre is initially permitted. This fee shall be deposited in the Bituminous Coal Open-Pit Mining Reclamation Fund. The payment shall be based on the same number of acres as that for which a bond is required. Notwithstanding the provisions of § 15–515 of this subtitle, the Secretary shall use the funds produced by the fee under this subsection to backfill, grade, and plant areas affected by open-pit mining where the funds received from forfeiture on bonds, cash, securities, and other collateral are not sufficient to do the necessary backfilling, grading, and planting. However, if at any time the money produced by this fee and at that time in the Bituminous Coal Open-Pit Mining Reclamation Fund exceed the sum of \$750,000, then the Secretary may use this excess money in accordance with the provisions of § 15–515 of this subtitle.

(f) The operator is responsible for the prevention of stream pollution in excess of federal or State standards.

(g) The application for a permit shall include for all land to be affected by the open-pit coal mining and reclamation operations:

(1) On a form furnished by the Department, the written consent of the landowner and any owner of a legal or equitable interest in the land surface for the applicant to enter on any land to be affected by the operator conducting open-pit coal mining and reclamation operations; or

(2) A conveyance that expressly grants or reserves to the applicant the right to extract coal by open-pit mining methods.

(h) The Department may not issue a permit to an applicant if any strip mining operation owned or controlled by the applicant is currently in violation of the

federal Surface Mining Control and Reclamation Act of 1977 (P.L. 95–87), any other law pertaining to air or water environmental protection, or any provisions of this subtitle or any rule, regulation, notice, order or permit issued under this subtitle unless the applicant submits proof that the violation is in the process of being corrected to the satisfaction of the appropriate jurisdictional agency.

(i) (1) If the requirements of this subtitle are met and no claim is outstanding under this subtitle against the operator, or any officer or director of a corporation, a permit shall be issued. Any additional permit is subject to each requirement for the original permit.

(2) However, the Bureau may not issue a strip mining permit on slopes of 20 degrees or more from the horizontal. Slope measurements shall be made every 200 feet along the contour of the original premining natural slope beginning with the proposed initial point of mining and including the proposed terminal point of mining. If any 200-foot section has a slope of 20 degrees or more a strip mining permit may not be issued for that 200-foot section, except that a permit may be issued in the case of land eligible for remining when in the opinion of the Land Reclamation Committee the land could be restored to its original contour.

(j) If the Director of the Bureau does not approve the application for a permit or permit revision, he promptly shall notify the operator by registered or certified mail setting forth his reasons for the disapproval. The operator then may take the steps required to have the Bureau's objections removed.

(k) A transfer, assignment, or sale of the rights granted under any permit issued pursuant to this subtitle may not be made without the written approval of the Department.

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